

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Taylor-Wharton Cryogenics LLC
Theodore, Mobile County, Alabama**

USEPA ID NUMBER ALD085774875

ORDER NO. 09-XXX-HW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Taylor-Wharton Cryogenics LLC (hereinafter "Taylor-Wharton") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Taylor-Wharton operates a cryogenic tank manufacturing and repair facility in Theodore, Mobile County, Alabama, that is assigned EPA Identification Number ALD085774875.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, and 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).
4. On January 27, 2009, Department personnel conducted an on-site compliance evaluation inspection (CEI) of Taylor-Wharton. The inspection and review of Taylor-Wharton's

compliance showed the following:

A. ADEM Admin. Code r. 335-14-3-.03(5)(a)3. as incorporated by 335-14-3-.03(5)(d)5. requires that while being accumulated on-site each container and tank to be labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste number. In the "RDF area", one filled 55-gallon container awaiting transport to the hazardous waste storage area lacked the required markings.

B. ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii) requires a generator to mark his [satellite accumulation area] containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers. One 55-gallon container in the satellite accumulation area (SAA) of the RDF area lacked required markings.

C. ADEM Admin. Code r. 335-14-3-.03(5)(c)2. requires the date upon which each period of accumulation begins to be clearly marked and visible for inspection on each container. The aforementioned filled 55-gallon container in the RDF area lacked required accumulation start date.

D. ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(ii)(I) requires the generator to post the following information next to the telephone: the name and telephone number of the emergency coordinator; location of fire extinguishers and spill control material, and, if present, fire alarm; and the telephone number of the fire department, unless the generator has a direct alarm. The required emergency information was not posted by the telephone.

E. ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(iii) requires employees to complete an initial training program in hazardous waste management within six months after the date of their employment or assignment to a new position, whichever is later. Taylor-Wharton could not demonstrate that new hazardous waste employees are trained within six months of placement.

F. ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(iii)(II) requires the generator to maintain at the site documentation that the required training has been administered to and completed by required employees. Documentation of training records must be maintained on-site for a period of at least three years from the date the employee last worked for the generator

or until the generator closes, whichever comes first. Taylor-Wharton could not produce any training records for its hazardous waste employees.

G. ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(iii)(III) requires the generator to maintain on-site a written description of the training required under 335-14-3-.03(5)(d)5(iii). Taylor-Wharton could not produce any documentation describing its hazardous waste management training program.

H. ADEM Admin. Code r. 335-14-6-.09(4)(a) as incorporated by 14-3-.03(5)(c)1(i) requires a container holding hazardous waste to always be closed during storage, except when it is necessary to add or remove waste. Two SAA containers, one in the Bulk area and the other in the RDF area, had open bungs and open-top funnels.

I. ADEM Admin. Code r. 335 14-6-.02(6)(d) as incorporated by ADEM Admin. Code r. 335-14-6-.09(5) requires the owner or operator to record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions. The time of inspection has not been recorded on the weekly hazardous waste storage area inspection logs since July 7, 2008.

J. ADEM Admin. Code r. 335-14-6-.09(5) requires the owner or operator to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration of containers and the containment system caused by corrosion or other factors. The owner or operator must also note the number and capacity of hazardous waste containers present. These inspections must be documented in accordance with Rule 335-14-6-.02(6)(d). Taylor-Wharton failed to record the capacity of hazardous waste containers held in storage in the weekly hazardous waste storage area inspection logs.

K. ADEM Admin. Code r. 335-14-8-.01(1)(c)2.(viii) allows generators to treat on-site generated hazardous wastes by evaporation in tanks or containers if the generator provides the Department with written notice of intent to treat hazardous wastes by evaporation in tanks or containers at least sixty days prior to the initiation of waste treatment. This notice must

provide documentation of compliance with the requirements of 335-14-8-.01(1)(c)2.(viii)(II), (III), and (IV), and must be maintained for the life of the facility and be available for inspection. Taylor-Wharton failed to notify, in writing, the Department of its intent to treat its paint waste by evaporation prior to initiation of waste treatment. Fifteen, open 5-gallon containers of solvent-borne paint waste destined for disposal as a non-hazardous waste had been placed in the old RCRA storage area and allowed to solidify.

L. ADEM Admin. Code r. 335-14-11-.02(4)(d)1. requires a small quantity handler of universal waste to contain any lamps in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. Two corrugated cardboard containers of universal waste (UW) lamps were not closed. One UW fluorescent lamp was not containerized.

M. ADEM Admin. Code r. 335-14-11-.02(5)(e) requires each lamp or a container or package in which the lamps are contained to be labeled or marked clearly with any one of the following phrases: "Universal Waste--Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)". The aforementioned containers and lamps lacked the required markings.

N. ADEM Admin. Code r. 335-14-11-.02(6)(c) requires a small quantity handler of universal waste who accumulates universal waste to be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. Taylor-Wharton was unable to demonstrate how long it accumulates UW onsite.

O. ADEM Admin. Code r. 335-14-11-.02(5)(a) requires universal waste batteries (i.e., each battery), or a container in which the batteries are contained, to be labeled or marked clearly with any one of the following phrases: "Universal Waste--Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)". Three un-containerized UW batteries lacked the required markings.

P. ADEM Admin. Code r. 335-14-17-.03(4)(a)1. requires a container holding used oil to always be closed during storage, except when it is necessary to add or remove used oil.

One used oil container was not closed; a non-latching drum funnel was screwed into one bung.

5. On February 17, 2009, the Department issued a Notice of Violation (NOV) to Taylor-Wharton citing the violations that were in existence or were observed at the time of the January 27, 2009 CEI.

6. In a series of emails received by the Department between January 28, 2009 and February 4, 2009 Taylor-Wharton responded to potential areas of noncompliance that were noted during the January 27, 2009 CEI and documented in the Preliminary Inspection Report that was given to Taylor-Wharton's representative at the conclusion of the CEI. On March 12, 2009, the Department received Taylor-Wharton's response to the aforementioned NOV. Based on the information provided in the submittals, the Department determined that Taylor-Wharton appeared to have adequately addressed the violations cited in the aforementioned NOV.

7. Taylor-Wharton consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein. Taylor-Wharton neither agrees nor disagrees with the Stipulations presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the AHWMMMA, has consented to the terms of this Consent Order.

8. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

TAYLOR-WHARTON'S CONTENTIONS

9. Taylor-Wharton did not incur any economic benefit from the alleged violations. Taylor-Wharton mitigated the effects of the alleged violations by quickly making corrections to all deviations.

10. The Department neither admits nor denies Taylor-Wharton's contentions.

DEPARTMENT'S CONTENTIONS

11. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation.

12. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** Taylor-Wharton failed to comply with preparedness and prevention standards, permit standards, hazardous waste tank and container management standards, universal waste small quantity handler standards, and used oil management standards. These violations constitute a substantial deviation from the hazardous waste regulations. However, the Department is not aware of any irreparable harm to the environment resulting from the violations.

B. **THE STANDARD OF CARE:** Taylor-Wharton did not exhibit a standard of care commensurate with applicable regulatory standards.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** In failing to comply with regulatory requirements, Taylor-Wharton may have avoided hazardous waste disposal fees.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** After notification by the Department, Taylor-Wharton

took actions described in emails received on January 28 and February 4, 2009 to address 4(a), 4(c), 4(d), 4(h), 4(i), 4(l), 4(n) and 4(p) of this Order. Taylor-Wharton described further actions taken in response to the NOV via a letter dated March 12, 2009. The Department is not aware of any other actions taken by Taylor-Wharton to minimize or mitigate the effects of the alleged violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on Department records, Taylor-Wharton has no recent record of violations of the AHWMMMA.

F. THE ABILITY TO PAY: Taylor-Wharton has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$15,000.00 is appropriate and consistent with the historical penalty range imposed by the Department for similar violations, as follows:

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Preparedness and Prevention standards	\$1,000 - \$10,000
Treatment, storage, or disposal standards	\$1,000 - \$25,000
Container/tank management standards	\$100 - \$12,000
Universal Waste Small Quantity Handler standards	\$100 - \$2,500
Used Oil Management standards	\$100 - \$9,000

13. Taylor-Wharton neither admits nor denies the Department's contentions.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Taylor-Wharton, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Taylor-Wharton agree to enter into this Consent Order with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.), Taylor-Wharton agrees to pay to the Department a civil penalty in the amount of \$15,000.00, payable in six monthly installments of \$2,500.00. The first payment shall be due on the first of the month following the effective date of this Order, with each subsequent payment due on the first of each month thereafter. Failure to pay the civil penalty within the allowed time frame from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Taylor-Wharton agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Taylor-Wharton's name and address and the ADEM Administrative Order Number of this action.

C. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.) and the regulations promulgated pursuant thereto.

D. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to mark or label all containers of hazardous waste in accordance with ADEM Admin. Code div. 14 requirements.

E. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to ensure that the accumulation start date is clearly marked and visible for inspection on each container of hazardous waste.

F. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to ensure that all required emergency information is posted next to facility telephones.

G. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to require employees to complete an initial training program in hazardous waste management within six months after the date of their employment or assignment to a new position, whichever is later.

H. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to maintain at the site documentation that the required training has been administered to and completed by required employees. Documentation of training records must be maintained on-site for a period of at least three years from the date the employee last worked for the generator or until the generator closes, whichever comes first.

I. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to maintain at the site a written description of the training required under ADEM Admin. Code r. 335-14-3-.03(5)(d)5(iii).

J. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to keep all containers of hazardous waste closed except when adding or removing material.

K. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to properly conduct and document weekly inspections of all hazardous waste storage areas and maintain these documents for a period of three years.

L. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to refrain from treating hazardous waste on site without meeting the requirements of ADEM Admin. Code r. 335-14-8-.01(1)(c)2.(viii) or obtaining a permit.

M. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to properly manage all universal wastes generated on site.

N. That, immediately upon the effective date of this Consent Order and continuing each and every day thereafter, Taylor-Wharton agrees to properly manage all used oil generated on site.

O. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

P. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

Q. Taylor-Wharton agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

R. For purposes of this Consent Order only, Taylor-Wharton agrees that the Department may properly bring an action to compel compliance with the terms and conditions

contained herein in the Circuit Court of Montgomery County. Taylor-Wharton also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Taylor-Wharton agrees to be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Taylor-Wharton, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Taylor-Wharton) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information agrees to be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of Taylor-Wharton, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

S. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Taylor-Wharton agrees to not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

T. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Taylor-Wharton does hereby waive any hearing on the terms and conditions of this Consent Order.

U. The parties agree that this Consent Order shall not affect Taylor-Wharton's obligation to comply with any Federal, State, or local laws or regulations.

V. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

W. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.


X. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

Y. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve Taylor-Wharton of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Taylor-Wharton

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Rev-  _____
(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

Joe Folger
(Printed Name)

CFO
(Printed Title)

6/23/09
(Date Signed)

(Date Executed)